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August 31, 2007

EX PARTE
ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, ROOM TWB-204
Washington, DC 20554

Re: In the Matter of Qwest Petition for Forbearance Under 47 U.S.C. §160(c) From Title II And Computer Inquiry Rules with Respect to Broadband Services; In the Matter of Petition of AT&T Inc, For Forbearance Under 47 U.S.C. §160(c) From Title II And Computer Inquiry Rules with Respect to Broadband Services; In the Matter of Petition of BellSouth Corporation For Forbearance Under 47 U.S.C. §160(c) From Title II And Computer Inquiry Rules with Respect to Broadband Services; In the Matter of Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. §160(c) From Application of Compute Inquiry And Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. §160(c) From Title II and Computer Inquiry Rules With Respect to Their Broadband Services.
WC Docket Nos. 06-125 and 06-147

Dear Ms. Dortch:

The New Jersey Division of Rate Counsel ("Rate Counsel") hereby files this letter in response to the Wireline Competition Bureau's request for additional data in these proceedings. Rate Counsel submits that any additional data provided cannot be used in determining whether the subject petitions should or could be granted. To consider such data without an opportunity to comment on such data is a denial of due process and in violation of the Administrative Procedure Act ("APA"). Rate Counsel fully support the comments of CompTel filed this week.

Rate Counsel also submits that the Federal Communications Commission ("FCC") must supply all analyses, including but not limited to demand and supply elasticity analyses, and HHI analyses that are used and relied upon in review of these petitions to all parties for comment. Otherwise, the FCC's action is arbitrary and capricious action under applicable case law. *See*

Owner-Operator Independent Drivers Assn., v. Federal Motor Carrier Safety Administration, 2007 U.S. App. *Lexis* 17513 (D.C. Cir. App. No. 06-1035) (dated July 24, 2006).

Rate Counsel also notes that the FCC in approving ACS of Anchorage, Inc. imposed a number of conditions as necessary to protect consumers.¹ Rate Counsel submits that the unilateral implementation of conditions in forbearance proceedings that are contested matters is a denial of due process and arbitrary, capricious, and agency action lacking a reasoned basis. Rate Counsel submits that all parties should be afforded the opportunity to weight in and propose alternative conditions to the extent such conditions affect whether the statutory criteria for granting forbearance are met, as a matter of law. The unilateral imposition of conditions without opportunity to contest or support is a denial of due process and a violation of the APA.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

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Acting Director

By: *Christopher J. White*
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Cc: *Via Electronic Mail*
Janice Myles, Competition Policy Division
Best Copy & Printing, Inc.

^{1/} See *I/M/O ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, Memorandum Opinion and Order, FCC 07-149 (released August 20, 2007)